IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 416 of 2002
With
FIRST APPEAL No.625 of 2002

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORP. - Appellant(s)
Versus
DAXABEN KARANSINH DETHA - Defendant(s)

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Appearance :
MR ASHISH M DAGLI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR MB PARIKH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/05/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 First Appeal No. 416 of 2002 is at the instance of Gujarat State Road Transport Corporation (hereinafter referred to as the Appellant) against the judgement and award dated 8th June 2001 passed by Motor Accident Claims Tribunal (Aux), Amreli in Motor Accident Claim Petition No.7 of 1991, whereby the Tribunal has awarded a sum of Rs.3,38,015/- along with interest at the rate of 9% per annum.

2.0 First Appeal No.625 of 2002 is at the instance of the original claimant praying for enhancement of the awarded amount in the aforesaid Motor Accident Claim Petition No.7/91.

3.0 The short facts leading to the filing of the claim petition as emerging from the record as under:

3.1 On 13th August 1990 at about 6.30 am the claimant was taking a morning walk on Amreli-Lathi State highway, near Jain Vidyarthi Bhavan. At that time one S.T. bus bearing registration No.GRU 7050, driven rashly and negligently, came from the direction of Lathi and knocked down the claimant from her back side. The claimant sustained serious bodily injuries and she was taken to Civil Hospital Amreli. Thereafter she was shifted to Vadilal Hospital, Ahmedabad where she was given treatment for 58 days. In spite of treatment, due to the

accident, her half of the body became paralytic and she is having severe memory loss and partial loss of eye sight. She has therefore claimed a total compensation in the sum of Rs.26,00,000/- from the appellant herein. The learned Tribunal after hearing the parties passed the aforesaid award against which the present appeals have been filed.

4.0 Learned Advocate for the appellant submitted that the accident in question has occurred due to the negligence on the part of the claimant and therefore she is not entitled to any compensation. He submitted that it is a case of negligence or contributory negligence. He submitted that the Criminal Court has acquitted the driver and therefore there cannot be any negligence on the part of the driver. He further submitted that the Tribunal erred in awarding the amount under the head of medical expenses though no documentary evidence is produced in this behalf. He has also questioned the multiplier of 16 taken by the Tribunal and the calculation of future loss of income.

5.0 Learned Advocate for the original claimant submitted that the amount awarded by the learned Tribunal is thoroughly inadequate and requires enhancement. He submitted that she had taken treatment for a period of 58 days, she became paralytic and she is suffering from severe memory loss and loss of eye sight. He submitted that she had incurred expenditure towards attendance about Rs.23000/- which was

not granted by the Tribunal. He submitted that the Tribunal has considered the future increments and other benefits as per the 5th Pay Commission. He submitted that the Tribunal ought to have taken multiplier of 20. He further submitted that the Tribunal has not considered the revised pay scale and in all ought to have granted 19,65,908 in this behalf. He has also submitted that the amount awarded under the head of nutritious food, etc. are on the lower side.

6.0 Heard the learned Advocates for the respective parties and perused the relevant evidence on record. The claimant had claimed compensation in the sum of Rs.26,00,000/-.

7.0 The Tribunal found that the claimant had produced medical bills at Exh.33 and 34 which came to a sum of Rs.21664/-. The Tribunal had discarded certain bills for which the claimant has failed to point out that the Tribunal has erroneously discarded the same. The claimant was serving as a teacher in Jijiben Forward Girls High School and was getting monthly Salary of Rs.3677/-.

8.0 Considering all the relevant evidence on record the Tribunal has come to the conclusion that there is a disability to the extent of 75%. The Tribunal considered in detail the medical evidence on record to arrive at this conclusion. Learned Advocates for the respective parties

are not in a position to show anything contrary to the evidence on record in this regard. The Tribunal has also considered decisions in the case of Pratap Narain Singh Deo Vs.Shrinivas Sahata and another, reported in 1976, ACJ 141 which, in our opinion, have been correctly appreciated. From the record it is seen that due to the injuries sustained by the claimant, the left body of the claimant is paralytic and she is suffering from speech disturbances and memory loss. Therefore she was declared unfit to work as Assistant Teacher in the aforesaid school and was made compulsorily retired from the date of the accident. Therefore the finding of the Tribunal is that the claimant can be said to be unfit for the work of Teacher and the disablement was taken at 75% partial disability of the body as a whole. We do not find any reason to take a different view of the matter.

9.0 To arrive at the future loss of income the Tribunal has considered the fact that the claimant could have served as a teacher up to the age of 58 years. The accident took place on 13.8.1990 and the monthly pay was Rs.3677/- per month. Therefore considering monthly income of Rs.3677/- and 75% body as a whole disability, the Tribunal has adopted multiplier of 5. We are of the opinion that considering the facts and circumstances and the law laid down by the apex court on the subject matter the multiplier 5 taken by the Tribunal is just and proper.

10.0 On the basis of the certificate produced at Exh.61 the claimant had claimed Rs.17,59,360/- towards loss of pay. However, this certificate has taken into consideration the increment and interim relief which cannot be taken into account while considering loss of pay.. Considering all the aspects of the matter the Tribunal has found that the claimant is entitled to a sum of Rs.8,64,555 towards loss of pay. We find no reason to interfere with the said finding.

11.0 The Tribunal has considered the certificate produced at Exh.61 on the basis of which the claimant has claimed amount of gratuity, pension, revision of pay, etc. In this regard the Tribunal has considered the provisions of BCSR. According to the pension rules, if the service is less than 10 years on the date of retirement then the employee is not entitled to pension, but is entitled for one month pay for each year of the service with effect from the 1.1.1986. In the present case the claimant is entitled only one month pay for each year and in all 16 years. The Tribunal has further found that the claimant is entitled to Rs.8086/- towards one month pay and multiplied the same with 16 years and arrived at a figure of Rs.1,29,376/-. This was according to the BCSR and therefore no grievance can be made by either party.

12.0 From the total amount of Rs.9,93,931 (i.e. Rs.8,65,555 +

Rs.1,29,376/-) the Tribunal has deducted Rs.4,13,000/- being the amount paid and to be paid towards disability pension. The balance amount is Rs.5,80,931/-.

13.0 The Tribunal has awarded a sum of Rs.50000/- towards pain, shock and suffering and Rs.20000/- towards future expenses, attendance, etc. Thus, in all the Tribunal awarded Rs.8,38,015/-.

14.0 Thus, towards loss of pay the Tribunal has considered the period of treatment and monthly payment, etc. and we are of the opinion that no case is made out by either side either for reduction or enhancement of the awarded amount. Likewise, the Tribunal has awarded amount towards medical expenses as per the bills and other documents on record. For loss of pay the Tribunal has considered the aspects of pension in accordance with BSCR and no error is committed by the Tribunal in arriving at a figure of Rs.5,80,931. Under the head of pain, shock and suffering the Tribunal has awarded Rs.50000/- which, on the facts of the case, is quite reasonable. Even the amount of Rs.20000/- towards future expenses is just and proper. Learned Advocates for the either parties failed to point out anything from the record to show that the figures arrived at by the Tribunal is either on the lower side or on higher side.

15.0 As regards the negligence part is concerned, the Tribunal found that admittedly the S.T. Bus dashed the claimant from the rear side. Therefore it was evident that the driver of the S.T. Bus must have seen the claimant walking on the road from the long distance. The driver has in his evidence supported this fact. From the evidence it is evident that the driver has not taken reasonable care as a result of which the accident took place. Therefore, the Tribunal has rightly held that the driver of the S.T. Bus was negligent.

16.0 In the premises aforesaid, we are in complete agreement with the reasonings adopted and findings arrived by the Tribunal. The amount awarded by the Tribunal is just and proper and no interference is required to be caused in the award. Therefore there are no merits in both the appeals and they are accordingly dismissed. No order as to costs.

[ANIL R. DAVE, J.]

[K.S. JHAVERI, J.]

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